UNITED NATIONS

AT

Administrative Tribunal

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ADMINISTRATIVE TRIBUNAL

Judgement No. 570

Case No. 588: ROTH

Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Jerome Ackerman, President; Mr. Samar Sen, Vice-President; Mr. Ioan Voicu;

Whereas, on 17 July 1991, Jenny Roth, a former staff member of the United Nations, filed an application that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 15 October 1991, the Applicant, after making the necessary corrections, again filed an application containing the following pleas:

"PLEAS

First, to rescind the decision of the Secretary-General (...) rejecting the [Applicant's] claim, communicated to her by letter of [the Assistant Secretary-General, Office of Human Resources Management] of 14 March 1991 and received by her on 19 April 1991.

Second, to reinstate the [Applicant] in her previous contractual status (...) at the General Service level (G-4), or, auxiliarily, to grant the [Applicant] compensation for injuries suffered (...) as the consequence of an accident that occurred on 27 October 1987, during the performance of her official duties (...) (amount to be specified at a later date)."

Whereas the Respondent filed his answer on 12 February 1992;

Whereas the Applicant filed an additional statement on 30 March 1992;

Whereas the facts in the case are as follows:

The Applicant, a clerk-typist with the UN Information Service Library in the United Nations Office at Vienna (UNOV), was injured on UNOV premises on 27 October 1987. According to the Applicant, at 2.10 p.m., when assisting a visitor to exit the UN premises, "emerging from the almost total-darkness of the D Tower [of the Vienna International Centre] into the bright orange glare of the staircase of the C Building, I fell and found myself at the bottom of the stairs in terrible agony." According to the UN Security report, the visitor stated that the Applicant "gave him a guided tour through the building. While walking from the D-building 4th floor through the passage way (stairs), towards [the] C-building, [the Applicant] all of a sudden felt dizzy, stumbled at the stairs and fell backwards, causing her pain at the back." The Applicant was taken to the Medical Service and then, by ambulance, to a hospital. The Security Officer noted that "[the Applicant] was smelling strongly of alcohol" and recorded the time of the accident as 4:00 p.m. In the accident report, the Nurse who attended the Applicant stated that the Applicant felt dizzy and slipped down the stairs on her back". She also noted: "patient smells strongly of alcohol".

In a communication dated 2 November 1987, the Chief Medical Officer, UNOV, informed the UN Medical Director at Headquarters of the Applicant's accident and provided a medical report on the diagnosis. He concluded: "This lady is still under considerable pain and unfit for work until now. She filed this as an Appendix D claim".

On 7 January 1988, the Applicant filed a claim for compensation under Appendix D to the Staff Rules, arguing that her accident was service-incurred.

The Advisory Board on Compensation Claims (ABCC) considered the Applicant's claim at a meeting held on 18 May 1988. It recommended that the claim be denied as "on the basis of the reports submitted [supervisor's report, Security and Safety Service report, report of the UNOV Medical Service] ... the [Applicant] was not in the course of performance of official duties at the time of the incident". Therefore, it held, "the injury could not be deemed as attributable to the performance of official duties on behalf of the United Nations." This recommendation was approved by the Secretary-General on 20 May 1988 and communicated to the Applicant on 1 June 1988, by a Personnel Officer.

On 29 July 1988, the Applicant wrote to the Secretary-General requesting review of the decision to reject her claim under Appendix D. The Chief, Administrative Review Unit, treated the Applicant's letter as a request to the Secretary-General to re-open the Applicant's case, under article 9 of Appendix D and therefore forwarded it to the Secretary of the ABCC.

On 3 October 1988, the Applicant lodged an appeal with the UNOV Joint Appeals Board (JAB) against the administrative decision of 20 May 1988, "without prejudice to any decision which the Advisory Board may reach in any review". The essence of the Applicant's appeal was that the rejection of her claim was based on the erroneous opinion that, at the time of the accident, she was not performing official duties.

On 16 November 1988, the ABCC re-opened the Applicant's case under article 9 of Appendix D. It "found insufficient grounds to change its previous findings that the [Applicant] was not in the course of performance of official duties at the time of the incident". It recommended that the Secretary-General uphold his decision of 20 May 1988, to reject the Applicant's claim. This recommendation was accepted, on behalf of the Secretary-General, on 1 December 1988 and communicated to the Applicant by the Secretary of the ABCC on 2 December 1988.

On 16 December 1988, the Applicant asked the Secretary of the UNOV JAB to "activate" her appeal, lodged with the JAB on 3 October 1988.

On 14 February 1990, at the request of the JAB, the ABCC re-opened the case and reconsidered the Applicant's claim. It concluded that there were "insufficient grounds to change its previous findings that the [Applicant] was not in the course of performance of official duties at the time of the incident". It recommended that the Secretary-General uphold his decision of 1 December 1988, and deny the Applicant's claim. On 9 March 1990, the Secretary-General accepted the ABCC's recommendation. On 10 April 1990, the Secretary of the ABCC informed the Applicant of the Secretary-General's decision to accept the ABCC's recommendation.

On 25 February 1991, the UNOV JAB adopted its report on the Applicant's case. Its main conclusion reads as follows:

"On the basis of the evidence before it, including the statements of the Appellant and the administrative, security and medical reports, the Panel concluded that the Appellant has failed to sustain her claim that the injury was attributable to the performance of official duties.

In reaching its decision, the Panel addressed the question whether the injury suffered by the Appellant in the present case was attributable to the performance of official duties. In particular, the Panel considered whether, in the light of the evidence before it, the performance of official duties gave rise to the occurrence that led to the injury. In this connection, the Panel noted that, if the injurious event occurs in the course of performing official duties and if it is connected with those duties (e.g., an injury of a finger by a typist incurred while typing), it may be presumed that the injury is attributable to the performance of those duties. However, if the injury is caused by an occurrence that takes place during the performance of those duties but is not caused by the performance of the duties (e.g., a heart attack or, as in the present case, fluctuations in blood pressure that cause a staff member to fall while on United Nations premises), there is no presumption of attributability."

On 14 March 1991, the Applicant was informed that the Secretary-General had re-examined the case in the light of the JAB report and had decided to maintain the contested decision.

On 15 October 1991, the Applicant filed with the Tribunal, the application referred to earlier.

Whereas the Applicant's principal contention is:

The Applicant suffered her injury during the performance of her official functions. Therefore she should be compensated under Appendix D.

Whereas the Respondent's principal contention is:

The Applicant's request for compensation under Appendix D was properly denied as the injury is not attributable to the performance of official duties because it did not occur as a natural incident of performing official duties on behalf of the United Nations.

The Tribunal, having deliberated from 20 October to 9 November 1992, now pronounces the following judgement:

I. The Applicant appeals from a decision by the Secretary-General dated 14 March 1991, maintaining earlier decisions denying the Applicant's claim for compensation under Appendix D to the Staff Rules. The Applicant's claim arose out of an accident on the premises of UNOV on 27 October 1987. The ABCC, which had previously considered the Applicant's claim for compensation under article 2 of Appendix D, recommended denial on the ground that she was not performing official duties at the time of the accident and that the injuries suffered as a result were not attributable to the performance of her official duties. Article 2 of Appendix D provides, in relevant part:

> "(a) Compensation shall be awarded in the event of death, injury or illness of a staff member which is attributable to the performance of official duties on behalf of the United Nations ...
>
> (b) Without restricting the generality of paragraph (a), death, injury or illness of a staff member shall be deemed to be attributable to the performance of official duties on behalf of the United Nations ... when:
>
> (i) The death, injury or illness resulted as a natural incident of performing official duties on behalf of the United Nations;" (emphasis added).

The Applicant asks for rescission of the Secretary-General's decision dated 14 March 1991 and for either reinstatement in her previous contractual status or compensation for the injuries she suffered.

II. The Applicant asserts that on 27 October 1987, "at lunch time" she was informed that there was an official visitor requesting documents from the UN Information Service Library where she worked. She fixes the time of this occurrence at 12:20 p.m. Approximately 10-15 minutes later, the Applicant claims, the visitor came to her office. She maintains that she then gave him some documentation he requested and went to the Documents Unit for additional documents, arriving there at approximately 12:55 p.m. She says that she and the visitor left the Documents Unit at approximately 1:10 p.m. to return to her office but that the visitor began to ask her questions about the UN and its related organizations. She asserts that she then suggested that, since it was lunch time, they should go to the "lounge" for a sandwich in order to

discuss the visitor's questions. This, she claims, occurred at 1:15 p.m. According to the Applicant, it subsequently became evident that the visitor would need further material for his studies. The Applicant states that, upon their return to the Library at about 1:55 p.m., she provided him with the additional documentation. She says that the visitor then asked her to show him out since he had been unable to find his way on entering the complex, and that the time was then 2:05 p.m. She states that at 2:10 p.m., while emerging into "the bright orange glare of the staircase of the C Building, I fell and found myself at the bottom of the stairs in terrible agony."

III. However, a memorandum dated 15 March 1988, from a colleague of the Applicant, apparently inaccurately described by the Applicant as a "supervisor," as well as a contemporaneous record of the incident made by an officer of the Security Service, who arrived on the scene promptly after the accident occurred, tell another story. That story is confirmed by a contemporaneous record made by a nurse from the Medical Service, with a handwritten note on it by the attending physician, both of whom accompanied the Applicant in an ambulance to a hospital. To begin with, the sequence of events and the timing were described differently by the "supervisor," who also stated that visitors were not accompanied through the building by UNIC (United Nations Information Centre) employees. In addition, the reports of both the security officer and the nurse fix the time of the accident around 4 p.m., not 2:10 p.m. Secondly, both reports noted that the Applicant smelled strongly of alcohol at the time. The nurse's report also stated that the Applicant had reported that she had suddenly felt dizzy and had fallen backwards on the stairs. There is evidence that the Applicant had a prior medical problem involving dizziness. The security officer's report stated that, according to the visitor, the Applicant had given him a guided tour through the building. While walking through the passageway stairs, the Applicant suddenly felt dizzy, stumbled at the stairs, and fell backwards. Severe injury to the Applicant's back resulted.

IV. Although the Applicant was aware by 22 June 1988, of the Security Service report and disagreed with it, almost one year elapsed before she obtained a notarized statement dated 23 June 1989, from a former colleague who claimed to know about the incident. That statement supported the Applicant's version of the time when the accident occurred. A little over two years thereafter, the Applicant obtained a second notarized statement dated 26 August 1991, similar in nature, from another former colleague.

V. It is evident from the foregoing that disagreement exists on exactly what occurred and at what time. The Applicant's submission to the Tribunal indicates that the ABCC, in its consideration of the Applicant's claim, as well as in its reconsideration after reopening the claim, accepted the version of the sequence of events leading up to the accident, as described in the reports of the Security Service, the nurse and the Supervisor. In the opinion of the Tribunal, the ABCC could reasonably have done so on the basis of the evidence. It was not obliged to accept the Applicant's version. In the absence of prejudice, material mistake of fact or other extraneous factors, the Tribunal will not overturn such a factual determination or substitute its judgement for that of the ABCC. Quite clearly if, as the security officer reported, the visitor stated that the Applicant had given him a guided tour through the building and the accident occurred in the course of that tour, the ABCC could conclude that the injuries were not a natural incident of or attributable to the performance of official duties. The Applicant's duties did not include conducting guided tours. Similarly, the ABCC might have inferred that spending almost four hours with a visitor was not part of the Applicant's duties.

VI. The Director of the United Nations Information Centre, in a memorandum dated 2 February 1988, to the Personnel Service makes the point that, while it may be a courtesy to lead a visitor to another part of the building, this was not a required duty of the Applicant. This is confirmed by the description of the Applicant's job. The Tribunal recognizes that, depending upon the circumstances of a given case, an accident occurring while a staff member is engaged in an activity not strictly within the official duties defined and listed in any job description might nevertheless be attributable

to performance of official duties as a natural incident thereof. In the circumstances of this case, however, the Tribunal can find no ground for holding improper the Respondent's decision, based on the conclusion of the ABCC, that the accident was not attributable to the performance of official duties.

VII. The JAB also concluded that the Applicant had failed to establish that her injury was attributable to the performance of official duties. In reaching this conclusion, the JAB's reasoning as to presumptions of attributability with respect to the cause of an injury may be unduly restrictive in some cases and the Tribunal need not conclude that the JAB's method of analysis is always appropriate. In the Tribunal's view, each case must be evaluated on the basis of its own circumstances. The Tribunal considers that, in the circumstances of this case, it was not improper for the Respondent to decide, as he did, that the injury to the Applicant was not a natural incident of performing official duties on behalf of the United Nations.

VIII. In view of the foregoing, the Tribunal finds that no basis exists for the rescission of the Respondent's decision dated 14 March 1991 not to grant her compensation for the regrettable injury she sustained in consequence of the 27 October 1987 accident, or to order her reinstatement in her previous contractual status.

IX. Accordingly, the application is rejected.

(Signatures)

Jerome ACKERMAN
President

Samar SEN
Vice-President

Ioan VOICU
Member

New York, 9 November 1992

R. Maria VICIEN-MILBURN
Executive Secretary